

**§ 1421.306 Misrepresentation and scheme or device.**

(a) A producer shall be ineligible to receive payments under this subpart if it is determined by DAFP, the State committee, or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this subpart to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the producer's actions, shall be refunded with interest together with such other sums as may become due. Any producer engaged in acts prohibited by this section and any person receiving payment under this subpart, as a result of such acts, shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

**§ 1421.307 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under this application, or this subpart, and if any refund of a payment to CCC shall become due for that or other reason in connection with the application, or this subpart, all payments made under this subpart to any producer shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payments charges as provided for in part 1402 of this chapter.

(b) All persons listed on an application shall be jointly and severally liable for any refund due in connection with that application and for any related charges which may be determined to be due for any reason.

(c) Interest shall be applicable to refunds required of the producer. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of

the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment but the interest rate shall increase to reflect any increase in the rate charged to CCC by Treasury for any percent of time for which the interest assessment is collected. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the producer.

(d) Late payment interest shall be assessed on refunds in accordance with the provisions of, and subject to the rates in 7 CFR part 1403.

(e) Producers must refund to CCC any excess payments made by CCC with respect to any application in which they have an interest. Such refund shall be subject to interest at the same rate that applies to other refunds.

**Subpart E—Standards for Approval of Warehouses for Grain, and Similarly Handled Commodities**

SOURCE: 44 FR 67078, Nov. 23, 1979, unless otherwise noted. Redesignated at 67 FR 63511, Oct. 11, 2002.

**§ 1421.5551 General statement and administration.**

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the initial or continuing approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of:

(1) Wheat, oats, corn, rye, barley, sorghums, flaxseed, soybeans, sunflower seed, canola, rapeseed, safflower, mustard, and such other oilseeds as the Secretary may determine under a Uniform Grain Storage Agreement (which commodities are hereinafter referred to as "grain"),

(2) Rough rice under a Uniform Rice Storage Agreement,

(3) Milled rice under a Milled Rice Storage Agreement,

(4) Dry Edible Beans under a Bean Storage Agreement, and

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(5) Seed under a Seed Storage Agreement, which are owned by CCC or held by CCC as security for price support loans.

This subpart is not applicable to grain, rough and milled rice, dry edible beans, and seed purchased in store for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by KCCO and a storage contract or agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage contract or agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart, shall submit to CCC at KCCO:

(1) A completed Form CCC-24, "Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed", and a completed Form CCC-24-1, "Supplement to Application for Approval of Warehouse for Grain, Rice, Dry Edible Beans, and Seed",

(2) A current financial statement prepared in accordance with generally accepted accounting principles meeting the following requirements:

(i) Each financial statement shall include, but not be limited to the following:

- (A) A balance sheet;
- (B) A statement of income (profit and loss);
- (C) Statement of retained earnings; and
- (D) A statement of changes in the financial position.

(ii) Each financial statement shall be accompanied by one of the following:

(A) A report of audit or review conducted by an independent CPA or an independent public accountant in accordance with standards established by

the American Institute of Certified Public Accountants. The accountant's report of audit or review shall include the accountant's certifications, assurances, opinions, comments, and notes with respect to such financial statement, or

(B) A compilation report of the financial statement which is prepared by a grain commission firm or a management firm if such firm has been authorized by the Deputy Vice President, CCC (Deputy Administrator, Commodity Operations, FSA) to provide a compilation report of financial statements of warehousemen.

(iii) All financial statements shall be accompanied by a certification by the chief executive officer of the warehouseman, under penalty of perjury, that the financial statement(s) accurately reflects the financial condition of the warehouseman for the period specified in such statement.

(iv) A current financial statement on Form WA-51-2, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51-2 with approval of the Director, KCCO, or the Director's designee.

(v) Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under §1421.5552(a)(2) and such other documents or information as CCC may require.

(e) The provisions of paragraph (d)(2) of this section shall also be applicable to warehousemen who have an existing storage contract with CCC. Such warehousemen with existing storage contracts shall submit their financial statements to CCC in the manner prescribed reflecting their financial condition as of the close of the warehouseman's fiscal or calendar

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year's operation, whichever is applicable. Thereafter, the financial statements and the audit, review or compilation reports shall be furnished annually to reflect the warehouseman's fiscal or calendar year's operation, whichever is applicable, and at such other times as may be required by the AMS or CCC.

[44 FR 67078, Nov. 23, 1979, as amended at 47 FR 22502, May 25, 1982; Amdt. 4, 50 FR 29640, July 22, 1985; 56 FR 46371, Sept. 12, 1991]

### § 1421.5552 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or handling of CCC owned or loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of \$50,000 or an amount which is computed by multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity which the warehouseman desires to store and which the warehouse can accommodate when stored in the customary manner) under the approved contract with CCC times twenty-five (25) cents per bushel in the case of grain, fifty (50) cents per hundredweight in the case of rough rice, eighty-five (85) cents per hundredweight in the case of milled rice, and sixty (60) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to an amount which is computed by multiplying the estimated number of pounds of seed to be stored times seven (7) cents per pound. If this calculated net worth requirement exceeds \$50,000, the

warehouseman may satisfy any deficiency in net worth between the \$50,000 minimum requirement and such calculated net worth requirement by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected upon request by CCC, any deficiencies in the performance of any storage contract or agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only prenumbered warehouse receipts and scale tickets,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to complete load out within sixty (60) working days of that quantity of grain, rice, beans, or seed for which the warehouse is or may be approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, or Seed Storage Agreement. Notwithstanding the provisions of this paragraph, the load out capacity of any warehouse at a single location need not exceed the equivalent of 200 railroad cars per day.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operations shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials, and each of the supervisory employees of the warehouseman in charge of the warehouse operations shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately